sequently removed from the state. *Held*, that such evidence is inadmissible in criminal cases. *Holifield* v. *City of Laurel*, 50 So. 488 (Miss.).

In civil cases it is almost universally held that evidence of testimony given in a former trial of the same issue between the same parties is admissible if the witness is absent from the jurisdiction. *Wheeler* v. *Jenison*, 120 Mich. 422. Upon the question of applying this rule in criminal cases, however, the courts are not in agreement. There seems to be no sufficient reason for a distinction between the two classes of cases. *People* v. *Devine*, 46 Cal. 45; *Vaughan* v. *State*, 58 Ark. 353, 370. *Contra*, *U. S.* v. *Angell*, 11 Fed. 34; *People* v. *Newman*, 5 Hill (N. Y.) 295. The introduction of the evidence works no greater hardship on the state or the prisoner, than on a party to a civil action. In both cases there has been the all-important opportunity for cross-examination. The constitutional provision that an accused person shall be confronted by the opposing witnesses is very generally understood to be merely declaratory of the common law, and so subject to all the exceptions to the hearsay rule. See *State* v. *McO'Blenis*, 24 Mo. 402. Thus, in the state in which the principal case was decided, the death of a witness will make evidence of his testimony admissible in a subsequent trial of the same case. *Lipscomb* v. *State*, 76 Miss. 223.

INSURANCE — CONSTRUCTION OF PARTICULAR WORDS AND PHRASES IN STANDARD FORMS — "THE INSURED" TO FURNISH PROOFS OF LOSS. — A mortgagor took out insurance payable to the mortgagee as his interest might appear. The policy provided that the mortgagee's interest should not be invalidated by any act or neglect of the mortgagor, and that "the insured" should furnish proofs of loss within a certain time. *Held*, that recovery by the mortgagee is not barred by the lack of proofs within the stipulated time. *Ohio-German Insurance Co.* v. *Krumm*, 12 Oh. Cir. Ct. R. N. S. 364.

In the absence of any provision against invalidation of the policy by neglect of the mortgagor, by the weight of authority, the mortgagee could not recover. *Shapiro* v. *Western Home Insurance Co.*, 51 Minn. 239. The "union mortgage clause" protects the mortgagee from the mortgagor's neglect, but not from his own act or neglect. *Genesee, etc. Association* v. *U. S. Fire Insurance Co.*, 16 N. Y. App. Div. 587. Whether failure to furnish proofs was his own neglect depends on whether the term "the insured" applies to the mortgagor alone, or also to the mortgagee. The cases and text-books frequently suggest that the mortgage clause makes a separate collateral contract of insurance between the underwriter and the mortgagee. See *Queen Insurance Co.* v. *Dearborn, etc., Association*, 175 Ill. 115; 1 CLEMENT, FIRE INSURANCE, 33. If such a view is correct, the mortgagee is as truly "the insured" as the mortgagor. But it is believed that the language referred to is inaccurate, and that the mortgagee is not a promisee in the insurance contract, but merely a beneficial third party. Hence "the insured" refers only to the mortgagor and the principal case is correct.

INSURANCE — MUTUAL BENEFIT INSURANCE — DESIGNATION OF ILLEGAL BENEFICIARY. — A person insured in a mutual benefit society designated an illegal beneficiary. After the insured's death, the administratrix claimed the amount of the certificate. *Held*, that she is entitled to it. *Mullen* v. *Woodmen of the World*, 122 N. W. 903 (Ia.).

The right of a person insured in a mutual benefit society to designate a beneficiary is a mere naked power of appointment. *Pilcher* v. *Puckett*, 77 Kan. 284. This power is not property. *Maryland Mut. Ben. Soc., etc.* v. *Clendinen*, 44 Md. 429. If there is no designation, no one can recover as beneficiary. *Eastman* v. *Provident Mut. Relief Asso.*, 62 N. H. 555. And the appointment of an illegal beneficiary is equivalent to a total failure to appoint. *Rindge* v. *N. E. Mut. Aid Soc.*, 146 Mass. 286. Yet the principal case is supported by several decisions. In some, the mistake is made of treating the power of the assured to appoint a beneficiary, as a right to the benefit. *Newman* v. *The Covenant Mut. Ins. Asso.*,

76 Ia. 56. In others, there is a confusion of ordinary life insurance decisions with mutual benefit insurance cases. *Schmidt* v. *The Northern Life Ass'n*, 112 Ia. 41. And in still others, the society is called a trustee for the insured's heirs, because of the statements in its constitution and by-laws as to the purpose of the society to protect heirs of members. *The Supreme Lodge, etc.* v. *Menkhausen*, 209 Ill. 277. But these statements are merely preliminary, and the only undertaking is to pay to some designated person. The result in the principal case, however, is highly desirable, and statutes or by-laws commonly provide for such a contingency.

MORTGAGES — MORTGAGOR'S RIGHT TO AN ACCOUNT FOR RENTS AND PROFITS — NATURE OF THE RIGHT. — A mortgagee filed a bill for foreclosure. The mortgagor pleaded that the rents and profits received by the mortgagee while in possession were sufficient to satisfy the debt, and asked for an accounting. *Held*, that the court may strike a balance between the amount chargeable to the mortgagee and the mortgage debt, and give judgment of foreclosure accordingly. *Hoye* v. *Bridgewater*, 118 N. Y. Supp. 951 (Sup. Ct., App. Div.). See NOTES, p. 301.

MUNICIPAL CORPORATIONS — GOVERNMENTAL POWERS AND FUNCTIONS — INVESTIGATION OF MUNICIPAL PROBLEMS. — The common council of the city of Detroit placed the sum of five thousand dollars at the disposal of the mayor, to be used in investigating the street railway problem of the city presented by the expiration of certain franchises. An injunction was sought to prevent the expenditure of this money. *Held*, that a writ of mandamus will be issued to compel the lower court to issue such injunction. *Attorney General ex rel. Maguire* v. *Murphy*, 122 N. W. 260 (Mich.). See NOTES, p. 293.

MUNICIPAL CORPORATIONS — OFFICERS AND AGENTS — EFFECT OF RE-ELECTION AFTER OUSTER. — The charter of New York City provides that the president of a borough, an officer chosen by popular vote, may be removed for cause by the governor, and that a vacancy shall be filled by a majority of the aldermen from the borough. The defendant, having been so removed, was immediately selected by the aldermen for the remainder of his original term. *Held*, that he is not entitled to office. *People* v. *Ahearn*, 42 N. Y. L. J. 761 (N. Y. Ct. App., October, 1909).

This affirms an interlocutory judgment of the Appellate Division reversing a judgment of the Supreme Court. For a criticism of a decision precisely similar to that in the principal case, see 20 HARV. L. REV. 316; 22 HARV. L. REV. 540.

PAROL EVIDENCE RULE — SUBSTANTIVE LAW EXPRESSED IN TERMS OF EVIDENCE — CONTRACTS: WHETHER LEGAL IMPORT OF SAME IS WITHIN PROTECTION OF THE RULE. — On September 1, 1905, the plaintiff wrote to the defendant offering an option for the continuation of a contract between them for one year, from July 26, 1906. The defendant acknowledged the receipt of the offer without accepting it. On July 26, 1906, he sent an acceptance, but the plaintiff refused to abide by the terms of the offer. Evidence offered by the defendant of an oral agreement that the offer was to stay open till July 26, 1906, was excluded. The defendant appealed. *Held*, that the evidence was rightly excluded. *Standard Box Co.* v. *Mutual Biscuit Co.*, 103 Pac. 938 (Cal.). See NOTES, p. 302.

POLICE POWER — REGULATION OF BUSINESS AND OCCUPATIONS — REQUIREMENT OF BANK DEPOSITORS' GUARANTY FUND. — A statute provided that the business of banking be restricted to corporations, and required that contributions be made annually to a fund for the protection of the depositors of insolvent banks. *Held*, that the statute is an unreasonable exercise of the police power. *First State Bank of Holstein* v. *Shallenberger*, 72 Fed. 999 (Circ. Ct., D. Neb.). See NOTES, p. 292.